

NOT FOR PUBLICATION

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

United States of America,

Plaintiff/Respondent,

v.

Ira W. Gentry,

Defendant/Movant.

No. CV-12-02210-PHX-SRB
CR06-00464-PHX-SRB
ORDER

On October 16, 2012, Defendant Ira Gentry (Gentry) filed a Motion under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody. The Government filed a response on May 6, 2013 and Gentry replied on June 7, 2013. In his motion, Gentry raised 15 issues which are detailed on pages 7-8 of the Magistrate Judge's Report and Recommendation filed July 3, 2013. The Magistrate Judge concluded only Gentry's claim of ineffective assistance of counsel was properly considered in this § 2255 Motion because all other issues were raised or should have been raised in Gentry's direct appeal and, therefore, are not reviewable in a § 2255 proceeding.

With respect to Gentry's claims of ineffective assistance of counsel, the Magistrate Judge found the claims were premised primarily on Gentry's contention that counsel should have pressed particular issues pretrial and in trial. All of these issues were also raised and decided adversely to Gentry in his direct appeal or in his other post-conviction motions. His arguments on the merits on these issues were all rejected. Therefore, Gentry has not established his counsel's performance was ineffective or that

1 he was prejudiced in anyway by any alleged failure of counsel to press non-meritorious
2 issues. The Magistrate Judge recommended that Gentry's motion be denied and
3 dismissed with prejudice.

4 On July 17, 2013 Gentry filed timely objections to the Magistrate Judge's Report
5 and Recommendation which the Court finds to be without merit. Rather the Court finds
6 itself in agreement with the Report and Recommendation of the Magistrate Judge.

7 IT IS ORDERED overruling Gentry's objections to the Report and
8 Recommendation.

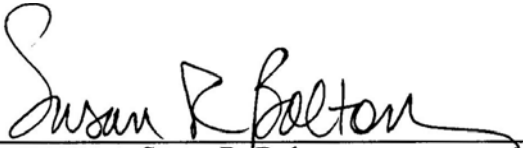
9 IT IS FURTHER ORDERED adopting the Report and Recommendation of the
10 Magistrate Judge as the Order of this Court.

11 IT IS FURTHER ORDERED that Gentry's Motion Under 28 U.S.C. § 2255 to
12 Vacate, Set Aside or Correct Sentence by a Person in Federal Custody is denied.

13 IT IS FURTHER ORDERED denying any Certificate of Appealability and leave
14 to proceed in forma pauperis on appeal. The denial of the Petition is justified by a plain
15 procedural bar and jurists of reason would not find the procedural ruling debatable and
16 because Petitioner has not made a substantial showing of the denial of a constitutional
17 right.

18 Dated this 20th day of December, 2013.

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Susan R. Bolton
United States District Judge